



October 13, 2015

Ms. Laurie Hughes  
Executive Director  
GATEWAY TO L.A. PBID  
6151 W. Century Blvd., Ste. 121  
Los Angeles CA 90045

**Re: Proposal for Gateway to LA Commercial Void Analysis**

Dear Ms. Hughes:

Kosmont & Associates, Inc. doing business as Kosmont Companies ("Consultant" or "Kosmont") is pleased to present this proposal for consulting services to Gateway to LA PBID ("Client") in connection with preparing a commercial void analysis related to the lack of amenities available for office and airport employees and LAX hotel visitors. This proposal serves as an Agreement when executed, and returned by Client to Kosmont.

## **I. BACKGROUND AND OBJECTIVE**

The Gateway to L.A. PBID has been asked by Los Angeles World Airports (LAWA) to produce a Commercial Void Study for review by LAWA's traffic engineers who are formulating the traffic study for the Landside Improvements environmental documentation.

The greater area including LAX and properties to the east of the airport, includes a significant concentration of hotel rooms, as well as approximately 50,000 plus employees in the immediate area, and is known to be underserved by commercial amenities.

The Study would be subject to the results of the analysis, which would identify whether a specially defined commercial use (e.g. retail) on the 19.75-acre residual site near Century east of Aviation and west of La Cienega, or other available residual sites, may generate minimal new regional trips traffic trips, to the extent that the development would be designed to serve the captive audience of existing LAX/Gateway hotel guests, employees working at local properties, as well as LAX, and other airport related visitors who are dropping off or picking up passengers.

The Study would identify the types of uses and maximum square feet of development that could be accommodated to respond to the existing amenities demand (gap).

This Study may be made a part of the environmental record to justify the future development on any available residual site with commercial land uses that meet the unmet demand for commercial amenities, including retail and restaurants.

## II. SCOPE OF SERVICES

Consultant proposes the following scope of work to address the Client needs

**Task 1:** Consultant will identify the study area adjacent to LAX, including creation of GIS maps showing the land area and properties involved (both LAX and the Landside area that includes Gateway to LA properties).

**Task 2:** Based on projections and estimates, Consultant will quantify by ranges, the hotel guests, employees of Gateway businesses, LAX employees, and LAX visitors already traveling within the LAX area.

**Task 3:** Based on ICSC and California Tourism employee and visitor spending data, Consultant will estimate the annual retail sales potential by major category (i.e. restaurants, retail shops, services, etc.) from existing employees and hotel guests.

**Task 4:** Consultant, working with Gateway, based on available material will prepare an estimated inventory of what retail and commercial service amenities exist within the study area by square footage, with projections of existing sales volumes (if possible).

**Task 5:** Consultant will prepare an economic analysis that identifies and projects the annual sales volume void, and converts that un-met demand into estimated square footage of development.

**Task 6:** Consultant will document its analytic method and summarize the findings to be presented to LAWA's traffic engineers and planning staff to demonstrate the level of new regional traffic trips that could be expected from a development comprised of commercial uses filling the existing void.

## III. SCHEDULE AND REQUIRED DATA

Consultant is prepared to commence work as soon as authorized. Consultant will complete a draft report within 4-5 weeks of authorization.

## IV. COMPENSATION

The fee for the analytic services will be based on Time and Materials at our standard billing rates. The professional fee will not exceed \$25,000 without Client advance approval.



Professional services will be invoiced monthly at Consultant's standard billing rates, as shown on Attachment A. In addition, invoices will include reimbursement for out-of-pocket expenses such as travel and mileage (provided that there shall be no overnight travel without the Client's prior approval and that mileage shall be reimbursed at Kosmont's normal mileage reimbursement rate of 57.5 cents per mile), professional printing, conference calls, and delivery charges for messenger and overnight packages at actual cost. Unless otherwise agreed to in advance, out-of-area travel, if any, requires advance funding of flights and hotel accommodations.

Consultant will also include in each invoice an administrative services fee to cover in-house copy, fax, telephone and postage costs equal to four percent (4.0%) of Consultant's monthly professional service fees incurred. Any unpaid invoices after 30 days shall accrue interest at the rate of 10% per annum.

Full payment must be received by Consultant before the final written summary or final report of Kosmont's findings is released to Client.

## V. OTHER PROVISIONS

**A. Termination.** Client or Consultant shall have the right to terminate this Agreement at any time upon written notification to the other party. Payment for fees accrued through the date of termination shall be remitted in full.

**B. Arbitration.** Any controversy or claim arising out of or in relation to this Agreement, or the making, performance, interpretation or breach thereof, shall be settled by arbitration at JAMS in Los Angeles, California. Each of the parties to such arbitration proceeding shall be entitled to take up to five depositions with document requests. The provisions of Section 1283.05 (except subdivision (e) thereof) of the California Code of Civil Procedure are incorporated by reference herein, except to the extent they conflict with this Agreement, in which case this Agreement is controlling. If the matter is heard by only one arbitrator, such arbitrator shall be a member of the State Bar of California or a retired judge. If the matter is heard by an arbitration panel, at least one member of such panel shall be a member of the State Bar of California or a retired judge. The arbitrator or arbitrators shall decide all questions of law, and all mixed questions of law and fact, in accordance with the substantive law of the State of California to the end that all rights and defenses which either party may have asserted in a court of competent jurisdiction shall be fully available to such party in the arbitration proceeding contemplated hereby. The arbitrator and arbitrators shall set forth and deliver their findings of fact and conclusions of law with the delivery of the arbitration award. Judgment upon the award rendered shall be final and non-appealable and may be entered in any court having jurisdiction.

**C. Attorneys' Fees.** In the event of any legal action, arbitration, or proceeding arising out of an alleged breach of this Agreement, the party prevailing in such legal action, arbitration, or proceeding shall be entitled to recover reasonable attorneys' fees,

expenses and costs, as well as all actual attorneys' fees, expenses and cost incurred in enforcing any judgment entered.

**D. Authority.** Each of the parties executing this Agreement warrants that persons duly authorized to bind each such party to its terms execute this Agreement.

**E. Further Actions.** The parties agree to execute such additional documents and take such further actions as may be necessary to carry out the provisions and intent of this Agreement.

**F. Assignment.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party without the prior written consent of the other party.

**G. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**H. Entire Agreement; Amendments and Waivers.** This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and any and all prior discussions, negotiations, commitments and understanding, whether written or oral, related hereto are superseded hereby. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing signed by both parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver of such provisions unless otherwise expressly provided. Each party to this Agreement has participated in its drafting and, therefore, ambiguities in this Agreement will not be construed against any party to this Agreement.

**I. Severability.** If any term or provision of this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and in force to the fullest extent permitted by law.

**J. Notices.** All notices, requests, demands and other communications which may be required under this Agreement shall be in writing and shall be deemed to have been received when transmitted; if personally delivered, if transmitted by telecopier, electronic or digital transmission method, upon transmission; if sent by next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express), the day after it is sent; and if sent by certified or registered mail, return receipt requested, upon receipt. In each case, notice shall be sent to the principal place of business of the respective party. Either party may change its address by giving written notice thereof to the other in accordance with the provisions of this paragraph.

**K. Titles and Captions.** Titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.



**L. Governing Law.** The statutory, administrative and judicial law of the State of California (without reference to choice of law provisions of California law) shall govern the execution and performance of this Agreement.

**M. Confidentiality.** Each of the parties agrees not to disclose this Agreement or any information concerning this Agreement to any persons or entities, other than to their attorneys and accountants, or as otherwise may be required by law.

**N. Counterparts.** This Agreement may be executed in one or more counterparts, each of which constitutes an original, and all of which together constitute one and the same instrument. The signature of any person on a telecopy of this Agreement, or any notice, action or consent taken pursuant to this Agreement shall have the same full force and effect as such person's original signature.

**O. Disclaimer.** Consultant's financial analysis activities and work product, which may include but is not limited to pro forma analysis and tax projections, are projections only. Actual results may differ materially from those expressed in the analysis performed by Consultant due to the integrity of data received, market conditions, economic events and conditions, and a variety of factors that could materially affect the data and conclusions. Client's reliance on Consultant's analysis must consider the foregoing.

Consultant services outlined and described herein are advisory services only. Any decisions or actions taken or not taken by Client and affiliates, are deemed to be based on Client's understanding and by execution of this Agreement, acknowledgement that Consultant's services are advisory only and as such, cannot be relied on as to the results, performance and conclusions of any investment or project that Client may or may not undertake as related to the services provided including any verbal or written communications by and between the Client and Consultant.

Client acknowledges that Consultant's use of work product is limited to the purposes contemplated within this Agreement. Consultant makes no representation of the work product's application to, or suitability for use in, circumstances not contemplated by the scope of work under this Agreement.

**P. Limitation of Damages.** In the event Consultant is found liable for any violation of duty, whether in tort or in contract, damages shall be limited to the amount Consultant has received from Client.

**Q. Expiration of Proposal for Services.** If this Agreement is not fully executed by the parties within thirty (30) days from the date of this letter, this proposal shall expire.

**R. Not an agreement for Legal Services or Legal Advice.** This Agreement does not constitute an agreement for the performance of legal services or the provision of legal advice, or legal opinion. Client should seek independent legal counsel on matters for which Client is seeking legal advice.

## VI. ACCEPTANCE AND AUTHORIZATION

If this Agreement is acceptable to Client, please execute two copies of the Agreement and return both originals to Kosmont Companies. Upon receipt of both signed contracts, we will return one fully executed original for your files. Kosmont will commence work upon receipt of executed Agreement.

Read, understood, and agreed to this

\_\_\_\_ Day of \_\_\_\_\_ 2015

**Gateway to LA PBID**

**Kosmont & Associates, Inc.**  
doing business as "Kosmont Companies"

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Name: Larry J. Kosmont, CRE®

Its: \_\_\_\_\_  
(Title)

Its: President & CEO

## ATTACHMENT A

### Kosmont Companies 2015 Public Sector Fee Schedule

#### Professional Services

President & CEO	\$295.00/hour
Partner/Senior Vice President/Senior Consultant	\$275.00/hour
Vice President/Associate	\$225.00/hour
Project Analyst / Project Manager	\$165.00/hour
GIS Mapping/Graphics Service/Research	\$ 95.00/hour
Clerical Support	\$ 70.00/hour

#### • Additional Expenses

In addition to professional services (labor fees):

- 1) An **administrative fee** for in-house copy, fax, phone and postage costs will be charged, which will be computed at four percent (4.0 %) of monthly Kosmont Companies professional service fees incurred; **plus**
- 2) **Out-of-pocket expenditures**, such as travel and mileage, professional printing, and delivery charges for messenger and overnight packages will be charged at cost.
- 3) If Kosmont retains **Third Party Vendor(s)** for Client (with Client's advance approval), fees and cost will be billed to Client at 1.1X (times) fees and costs.

#### • Charges for Court/Deposition/Expert Witness-Related Appearances

Court-related (non-preparation) activities, such as court appearances, depositions, mediation, arbitration, dispute resolution and other expert witness activities, will be charged at a court rate of 1.5 times scheduled rates, with a 4-hour minimum.

*Rates shall remain in effect until December 31, 2015.*

**NOTE: Full payment must be received by Consultant before the final written summary or final report of Kosmont's findings is released to Client.**